

BEFORE THE
PHYSICIAN ASSISTANT EXAMINING COMMITTEE
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation and
Petition to Revoke Probation Against:

JOHN HARVEY CATES, P.A.
License No. #PA-10552

Respondent.

No: D1-93-32049


DECISION AND ORDER

The attached Stipulation and Order is hereby adopted as the Decision and Order of the Physician Assistant Examining Committee, Department of Consumer Affairs, State of California.

This Decision shall become effective on June 4, 1998.

DATED May 5, 1998.

PHYSICIAN ASSISTANT EXAMINING COMMITTEE


Steven Johnson, PA-C, Chair

DANIEL E. LUNGREN, Attorney General
of the State of California
E. A. JONES III,
Deputy Attorney General, State Bar No. 71375
California Department of Justice
300 South Spring Street
Los Angeles, California 90013
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Attorneys for Complainant

BEFORE THE
PHYSICIAN ASSISTANT EXAMINING COMMITTEE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation and)	Case No. D1 93 32049
Petition to Revoke Probation)	
Against:)	OAH No. L-1997090461
)	
JOHN HARVEY CATES)	STIPULATED SETTLEMENT
15601 Manon Drive)	AND
Bakersfield, CA 93312)	DISCIPLINARY ORDER
)	
Physician Assistant License No.)	
PA 10552,)	
)	
Respondent.)	
)	

IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-entitled proceedings that the following matters are true:

1. An accusation and petition to revoke probation in case number 93 32049 was filed with the Physician Assistant Examining Committee, of the Department of Consumer Affairs (the "Committee") on August 15, 1997, and is currently pending against John Harvey Cates (the "respondent").

2. The Accusation and petition to revoke probation,

1 together with all statutorily required documents, was duly served
2 on the respondent on or about August 15, 1997, and respondent
3 filed his Notice of Defense contesting the Accusation and
4 petition to revoke probation on or about September 10, 1997. A
5 copy of Accusation and petition to revoke probation No. D1 93
6 32049 is attached as Exhibit "A" and hereby incorporated by
7 reference as if fully set forth.

8 3. The Complainant, Ray E. Dale, is the Executive
9 Officer of the Physician Assistant Examining Committee and
10 brought this action solely in his official capacity. The
11 Complainant is represented by the Attorney General of California,
12 Daniel E. Lungren, by and through Deputy Attorney General E. A.
13 Jones III.

14 4. The respondent is represented in this matter by
15 himself.

16 5. The respondent has fully reviewed the charges
17 contained in Accusation and petition to revoke probation Number
18 1E 93 32049, and the respondent has been fully advised regarding
19 his legal rights and the effects of this stipulation.

20 6. At all times relevant herein, respondent has been
21 licensed by the Physician Assistant Examining Committee under
22 Physician Assistant license No. PA 10552.

23 7. Respondent understands the nature of the charges
24 alleged in the Accusation and petition to revoke probation and
25 that, if proven at hearing, the charges and allegations would
26 constitute cause for imposing discipline upon his Physician
27 Assistant license .. Respondent is fully aware of his right to

1 a hearing on the charges contained in the Accusation and petition
2 to revoke probation, his right to confront and cross-examine
3 witnesses against him, his right to the use of subpoenas to
4 compel the attendance of witnesses and the production of
5 documents in both defense and mitigation of the charges, his
6 right to reconsideration, appeal and any and all other rights
7 accorded by the California Administrative Procedure Act and other
8 applicable laws. Respondent knowingly, voluntarily and
9 irrevocably waives and give up each of these rights.

10 8. Respondent admits the truth of each and every
11 allegation of the Accusation and petition to revoke probation No.
12 DI 93 32049, noting that the actual basis for the dismissal from
13 the diversion program was not a failure to participate in an
14 inpatient program (which was not part of his contract) but rather
15 the failure to comply with certain terms of the diversion
16 agreement. Respondent agrees that he has thereby subjected his
17 Physician Assistant license to disciplinary action.
18 Respondent agrees to be bound by the Committee's Disciplinary
19 Order as set forth below.

20 9. Based on the foregoing admissions and stipulated
21 matters, the parties agree that the Committee shall, without
22 further notice or formal proceeding, issue and enter the
23 following order:

24
25 DISCIPLINARY ORDER

26 IT IS HEREBY ORDERED that Physician Assistant
27 License number PA 10552 issued to John Harvey Cates is

1 revoked. However, the revocation is stayed and respondent is
2 placed on probation for 4 years on the following terms and
3 conditions.

4 1. DRUGS - ABSTAIN FROM USE

5 Respondent shall abstain completely from the personal
6 use or possession of controlled substances as defined in the
7 California Uniform Controlled Substances Act, and dangerous drugs
8 as defined by Section 4211 of the Business and Professions Code,
9 or any drugs requiring a prescription. This prohibition does not
10 apply to medications lawfully prescribed to respondent for a bona
11 fide illness or condition by another practitioner.

12 2. CONTROLLED DRUGS - MAINTAIN RECORD

13 Respondent shall maintain a record of all controlled
14 substances administered, transmitted orally or in writing on a
15 patient's record or handed to a patient by respondent during
16 probation, showing all the following: 1) the name and address of
17 patient, 2) the date, 3) the character and quantity of controlled
18 substances involved, and (4) the indications and diagnosis for
19 which the controlled substances was furnished, and (5) the name
20 of the supervising physician prescriber.

21 Respondent shall keep these records in a separate
22 file or ledger, in chronological order, and shall make them
23 available for inspection and copying by the Physician Assistant
24 Examining Committee, or its designee, upon request and without
25 charge.

26 3. BIOLOGICAL FLUID TESTING

27 Respondent shall immediately submit to biological fluid

1 testing upon the request of the Physician Assistant Examining
2 Committee or its designee. The cost of biological fluid testing
3 shall be borne by respondent.

4 4. DIVERSION PROGRAM

5 Upon notice of the effective date of this decision,
6 respondent shall immediately enroll and participate in the
7 Physician Assistant Examining Committee's Diversion Program until
8 the Committee or its designee determines that further treatment
9 and rehabilitation is no longer necessary. Respondent shall
10 participate in the program at his own expense. Quitting the
11 program without permission or being expelled for cause shall
12 constitute a violation of probation by respondent.

13 5. ETHICS COURSE

14 Within three months of the effective date of this
15 decision, respondent shall submit to the Committee or its
16 designee for its prior approval a course in ethics, which
17 respondent shall successfully complete during the first year of
18 probation. Respondent shall participate in the ethics course at
19 his own expense. Respondent may comply with this term by
20 providing the Committee or its designee of the successful
21 completion of an ethics course pursuant to the stipulation in
22 case number 1E-93-32049.

23 6. MONITORING/SUPERVISION

24 Within 30 days of the effective date of this decision,
25 respondent shall submit to the Committee or its designee for its
26 prior approval a plan of practice in which respondent's practice
27 shall be monitored by an approved supervising physician

1 responsible for patients treated by respondent as a physician
2 assistant.

3 If the supervising physician/monitor resigns or is no
4 longer available, respondent shall, within 15 days, move to have
5 a new supervising physician/monitor approved, through nomination
6 by respondent and approval by the Committee.

7 Respondent shall not practice as a physician assistant
8 until a supervising physician is approved by the Committee.

9 7. NOTIFICATION OF EMPLOYER AND SUPERVISING PHYSICIAN

10 Respondent shall notify his current and any subsequent
11 employer and supervising physician(s) of his discipline and
12 provide a copy of the Stipulation, Decision, and Order to each
13 such employer and supervising physician(s) during his period of
14 probation, at the onset of that employment. Respondent shall
15 ensure that each employer informs the Physician Assistant
16 Examining Committee, or its agent, in writing within thirty (30)
17 days, verifying that the employer and supervising physician(s)
18 has been informed of this Stipulation and Order.

19 8. OBEY ALL LAWS

20 Respondent shall obey all federal, state and local
21 laws, all rules governing the practice of medicine as a physician
22 assistant in California, and remain in full compliance with any
23 court ordered criminal probation, payments and other orders.

24 9. QUARTERLY REPORTS

25 Respondent shall submit quarterly declarations under
26 penalty of perjury on forms provided by the Physician Assistant
27 Examining Committee or its designee, stating whether there has

1 been compliance with all the conditions of probation.

2 10. SURVEILLANCE PROGRAM

3 Respondent shall comply with the Physician Assistant
4 Examining Committee's probation surveillance program.

5 Respondent shall, at all times, keep the Physician Assistant
6 Examining Committee informed of his or her addresses of business
7 and residence which shall both serve as addresses of record.
8 Changes of such addresses shall be immediately communicated in
9 writing to the Physician Assistant Examining Committee. Under no
10 circumstances shall a post office box serve as an address of
11 record.

12 Respondent shall also immediately inform the Physician
13 Assistant Examining Committee, in writing, of any travel to any
14 areas outside the jurisdiction of California which lasts, or is
15 contemplated to last, more than thirty (30) days.

16 11. INTERVIEW WITH MEDICAL CONSULTANT

17 Respondent shall appear in person for interviews with
18 the Physician Assistant Examining Committee's medical or expert
19 physician assistant consultant upon request at various intervals
20 and with reasonable notice.

21 12. TOLLING FOR OUT-OF-STATE PRACTICE OR RESIDENCE

22 The period of probation shall not run during the time
23 respondent is residing or practicing outside the jurisdiction of
24 California. If, during probation, respondent moves out of the
25 jurisdiction of California to reside or practice elsewhere,
26 including federal facilities, respondent is required to
27 immediately notify the Physician Assistant Examining Committee in

1 writing of the date of departure, and the date of return, if any.

2 13. INITIAL PROBATION REVIEW

3 Respondent shall appear in person for an initial
4 interview with a designee of the Committee within 90 days of the
5 final decision. Respondent shall subject himself to an initial
6 interview a time and place determined by the Committee or its
7 designee.

8 14. UNANNOUNCED CLINICAL SITE VISIT

9 At least once per calendar year or more frequently as
10 determined by the Committee or its designee unannounced clinical
11 site visits shall be made by the Committee or its designee to
12 ensure that respondent is complying with all terms and conditions
13 of probation.

14 15. COMPLETION OF PROBATION

15 Upon successful completion of probation as determined
16 by the Committee's executive officer, respondent's license shall
17 be fully restored.

18 16. VIOLATION OF PROBATION

19 If respondent violates probation in any respect, the
20 Physician Assistant Examining Committee, after giving respondent
21 notice and the opportunity to be heard, may revoke probation and
22 carry out the disciplinary order that was stayed. If an
23 accusation or petition to revoke probation is filed against
24 respondent during probation, the Physician Assistant Examining
25 Committee shall have continuing jurisdiction until the matter is
26 final, and the period of probation shall be extended until the
27 matter is final.

1 17. COST RECOVERY

2 The respondent is hereby ordered to reimburse the
3 Physician Assistant Examining Committee, for the investigative
4 and prosecution costs, the amount of \$6600.00 within the period
5 of probation pursuant to the following installment plan.
6 Respondent shall make equal monthly payments of \$137.50 during
7 the period of probation until the full amount is reimbursed.
8 Failure to make the monthly payment and the failure to reimburse
9 the Physician Assistant Examining Committee's cost of its
10 investigation and prosecution shall constitute violations of the
11 probation order. The filing of bankruptcy by the respondent
12 shall not relieve the respondent of his responsibility to
13 reimburse the Physician Assistant Examining Committee for its
14 investigative and prosecution costs.

15 18. VOLUNTARY LICENSE SURRENDER

16 Following the effective date of this decision, if
17 respondent ceases practicing due to retirement, health reasons or
18 is otherwise unable to satisfy the terms and conditions of
19 probation, respondent may voluntarily tender his license to the
20 Committee. The Committee reserves the right to evaluate the
21 respondent's request and to exercise its discretion whether to
22 grant the request, or to take any other action deemed appropriate
23 and reasonable under the circumstances. Upon formal acceptance
24 of the tendered license, respondent will no longer be subject to
25 terms and conditions of probation.

CONTINGENCY

1
2 This stipulation shall be subject to the approval of
3 the Committee. Respondent understands and agrees that Committee
4 staff and counsel for complainant may communicate directly with
5 the Committee regarding this stipulation and settlement, without
6 notice to or participation by respondent or his counsel. If the
7 Committee fails to adopt this stipulation as its Order, the
8 stipulation shall be of no force or effect, it shall be
9 inadmissible in any legal action between the parties, and the
10 Committee shall not be disqualified from further action in this
11 matter by virtue of its consideration of this stipulation.

ACCEPTANCE

12
13 I have read the above Stipulated Settlement and
14 Disciplinary Order. I have fully reviewed the terms and
15 conditions and other matters contained therein. I understand the
16 effect this Stipulated Settlement and Disciplinary Order will
17 have on my Physician Assistant License, and agree to be bound
18 thereby. I enter this stipulation freely, knowingly,
19 intelligently and voluntarily.

DATED: _____

12/29/97.

20
21
22 
23 JOHN HARVEY CATES
24 Respondent

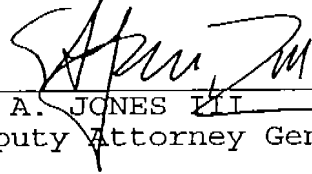
ENDORSEMENT

25
26 The foregoing Stipulated Settlement and Disciplinary
27 Order is hereby respectfully submitted for the consideration of

1 the Physician Assistant Examining Committee, Department of
2 Consumer Affairs.

3 DATED: 1-22-98

4 DANIEL E. LUNGREN, Attorney General
5 of the State of California

6 
7 E. A. JONES III
8 Deputy Attorney General

9 Attorneys for Complainant
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FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO August 15 1997
BY Thelma Boone ASSOCIATE

BEFORE THE
PHYSICIAN ASSISTANT EXAMINING COMMITTEE
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

1 charges brought herein, this license has been in full force and
2 effect. Unless renewed, it will expire on August 31, 1998.

3 JURISDICTION

4 3. This accusation and petition to revoke probation is
5 brought before the Committee under the authority of a Stipulation
6 adopted by an October 3, 1995 Decision of the Committee in Case No.
7 1E-93-32049, effective November 1, 1995. A true and correct copy
8 of the Decision and Stipulation in Case No. 1E-93-32049 is hereto
9 attached, marked "Appendix A," and by this reference is
10 incorporated herein as though set forth in full. The Stipulation
11 in Case No. 1E-93-32049 revoked respondent's license, stayed the
12 revocation and placed respondent on probation for four years under
13 certain terms and conditions, as more specifically set forth below.

14 4. Condition 4 of the Stipulation in Case No. 1E-93-
15 32049, states as follows:

16 "(4) Diversion program. Within 30 days of the effective
17 date of this decision respondent shall be reviewed by the
18 Diversion program of the Physician Assistant Examining
19 Committee to determine if respondent is eligible for the
20 Diversion program. Should the Diversion program determine
21 that respondent is eligible respondent shall enroll in and
22 participate in the Diversion's Program until the committee
23 determines that further treatment and rehabilitation is no
24 longer necessary. Quitting the program without permission or
25 being expelled for cause shall constitute a violation of
26 probation by respondent."

27 5. Condition 5 of the Stipulation in Case No. 1E-93-

1 32049, states as follows:

2 "(5) Ethics Course. Within three months of the effective
3 date of this decision, respondent shall submit to the
4 Committee or its designee for its prior approval a course in
5 ethics, which respondent shall successfully complete during
6 the first year of probation. Respondent shall participate in
7 this ethics course at his own expense."

8 6. Condition 9 of the Stipulation in Case No. 1E-93-
9 32049, states as follows:

10 "(9) Quarterly Reports. Respondent shall submit
11 quarterly declarations under penalty of perjury on forms
12 provided by the Committee, stating whether there has been
13 compliance with all conditions of probation."

14 7. Condition (16) of the Stipulation in Case No. 1E-93-
15 32049, states as follows:

16 "(16) Violation of Probation. If respondent violates
17 probation in any respect, the Committee, after giving
18 respondent notice and the opportunity to be heard, may revoke
19 probation and carry out the disciplinary order that was
20 stayed. If an accusation or petition to revoke probation is
21 filed against respondent during probation, the Committee shall
22 have continuing jurisdiction until the matter is final, and
23 the period of probation shall be extended until the matter is
24 final."

25 8. Condition 17 of the Stipulation in Case No. 1E-93-
26 32049, states as follows: --

27 "(17) Reimbursement of PAEC. As a condition of

1 probation, respondent shall reimburse the Committee for the
2 investigative and enforcement costs in the amount of
3 \$6,600.81.

4 "Respondent shall pay the above amount within 24
5 months from the effective date of the decision. Respondent
6 shall pay one half of the above amount within twelve (12)
7 months from the effective date of the decision and the
8 remaining one half of the above amount within the following
9 twelve (12) months. Failure to comply with this requirement
10 shall be considered a violation of probation."

11 9. This accusation and petition to revoke probation is
12 brought before the Committee under the authority of the following
13 sections of the Business and Professions Code (hereinafter "Code"):

14 A. Section 3527 of the Code provides as follows:

15 "(a) The committee may order the denial of an application
16 for, or the issuance subject to terms and conditions of, or
17 the suspension or revocation of, or the imposition of
18 probationary conditions upon a physician's assistant
19 Licence after a hearing as required in Section 3528 for
20 unprofessional conduct which includes, but is not limited to,
21 a violation of this chapter, a violation of the State Medical
22 Practice Act, or a violation of the regulations adopted by the
23 committee or the board."

24 B. Section 2234 of the Code provides that
25 unprofessional conduct includes, but is not limited to, the
26 following:

27 "(a) Violating or attempting to violate, directly or

1 indirectly, or assisting in or abetting the violation of, or
2 conspiring to violate, any provision of this chapter.

3 (b) Gross negligence.

4 (c) Repeated negligent acts.

5 (d) Incompetence."

6 C. California Code of Regulations, Title 16, Chapter
7 13.8, section 1399.521, entitled "Denial, Suspension or
8 Revocation of a Physician Assistant License," provides that in
9 addition to the grounds set forth in section 3527(a) of the
10 Code, the Committee may deny, issue subject to terms and
11 conditions, suspend, revoke or place on probation a physician
12 assistant for any violation of the Medical Practice Act which
13 would constitute unprofessional conduct for a physician and
14 surgeon.

15 D. Section 2354 of the Code provides that any failure
16 to complete successfully a diversion treatment program or an
17 acceptable substitute program may result in the filing of an
18 accusation for discipline which may include any acts giving
19 rise to the original diversion.

20 E. Section 3534.1 of the Code provides that the
21 Committee shall establish and administer a diversion program
22 for the rehabilitation of physician assistants whose
23 competency is impaired due to the abuse of drugs or alcohol.

24 F. Section 3534.5 of the Code provides that each
25 physician assistant who requests participation in a diversion
26 program shall agree to cooperate with the recovery program
27 designed for him. Any failure to comply with that program may

1 result in termination of participation in the program.

2 G. Section 3534.10 of the Code provides that the
3 Committee is not precluded by reason of the physician
4 assistant's participation in the Diversion program, from
5 commencing disciplinary action against a physician assistant
6 who is terminated unsuccessfully from the Diversion program.

7 H. Section 125.3 of the Code provides as follows:

8 "(a) Except as otherwise provided by law, in any order
9 issued in resolution of a disciplinary proceeding before any
10 board within the department or before the Osteopathic Medical
11 Board, the board may request the administrative law judge to
12 direct a licentiate found to have committed a violation or
13 violations of the licensing act to pay a sum not to exceed the
14 reasonable costs of the investigation and enforcement of the
15 case."

16 GROUND FOR REVOCATION OF PROBATION

17 10. Respondent John Harvey Cates has subjected his
18 License to revocation pursuant to Condition (16) of the
19 Stipulation in Case No. 1E-93-32049 because he failed to comply
20 with Condition (4), Diversion program, of the Stipulation in Case
21 No. 1E-93-32049, which provided that respondent enroll in and
22 participate in the Diversion Program until the Committee determined
23 that further treatment and rehabilitation was no longer necessary.
24 Condition (4) further provided that quitting the program without
25 permission or being expelled for cause constituted a violation of
26 probation by respondent. The circumstances are as follows:

27 A. On or about July 25, 1996, respondent enrolled

1 in the Committee's Diversion program.

2 B. On or about April 23, 1997, respondent was
3 dismissed from the Committee's Diversion program due to his
4 failure to comply with the mandate of the Diversion Evaluation
5 Committee that he participate in an inpatient treatment
6 program.

7 C. Respondent's expulsion for cause from the
8 Committee's Diversion program on or about April 23, 1997, as
9 more fully set forth in subparagraph 10.B. above, constitutes
10 a violation of probation by respondent.

11 11. Respondent John Harvey Cates has subjected his
12 License to revocation pursuant to Condition (16) of the
13 Stipulation in Case No. 1E-93-32049 because he failed to comply
14 with Condition (5), Ethics Course, of the Stipulation in Case No.
15 1E-93-32049, which provided that respondent successfully complete
16 an ethics course within the first year of probation. The
17 circumstances are as follows:

18 A. The Stipulation in Case No. 1E-93-32049 was
19 effective on October 3, 1995.

20 B. As of October 8, 1996, respondent had failed to
21 enroll in and successfully complete a course in ethics.

22 12. Respondent John Harvey Cates has subjected his
23 License to revocation pursuant to Condition (16) of the
24 Stipulation in Case No. 1E-93-32049 because he failed to comply
25 with Condition (9) Quarterly Reports, of the Stipulation in Case
26 No. 1E-93-32049, which provided that respondent provide quarterly
27 reports during the term of his probation. The circumstances are as

1 follows:

2 A. On or about July 8, 1996, respondent was
3 provided with 4 quarterly reports and was instructed on
4 preparation of the reports and when and where to file them.

5 B. Respondent failed to timely file a quarterly
6 report due on or about September 10, 1996.

7 C. Respondent failed to timely file a quarterly
8 report due on or about April 1, 1997.

9 13. Respondent John Harvey Cates has subjected his
10 License to revocation pursuant to Condition (16) of the
11 Stipulation in Case No. 1E-93-32049 because he failed to comply
12 with Condition (17), Reimbursement of PAEC, of the Stipulation in
13 Case No. 1E-93-32049, which provided that respondent shall
14 reimburse the Committee for investigative and enforcement costs in
15 the amount of \$6,600.81. The circumstances are as follows:

16 A. On or about October 24, 1996, respondent by
17 letter requested a payment plan whereby he would pay monthly
18 installments of \$183.35 for thirty-six months.

19 B. On or about November 12, 1996, respondent's
20 monthly payment plan was approved by the Committee.

21 C. Respondent failed to make monthly payment for
22 May 1997 and July 1997.

23 CAUSE FOR DISCIPLINE

24 14. Respondent John Harvey Cates is subject to
25 disciplinary action under sections 3534.5, 3534.10, 2354, and 2234,
26 subdivision (a) of the Code in that he was terminated from the
27 Committee's Diversion program without having successfully completed

1 the program. The circumstances are as follows:

2 A. The facts and circumstances set forth in
3 paragraph 10 above are incorporated here as if fully set
4 forth.

5 PENALTY CONSIDERATIONS

6 15. To determine the degree of penalty, if any, to be
7 imposed on respondent, complainant alleges that on November 14,
8 1994, an accusation issued against respondent in a prior
9 disciplinary matter. On October 3, 1995 a decision was rendered in
10 that matter revoking respondent's license . The revocation was
11 stayed and respondent's license was placed on probation for a
12 period of four years subject to various terms and conditions. A
13 copy of that decision is attached as "Appendix A" and is
14 incorporated here as if fully set forth here.

15 PRAYER

16 WHEREFORE, the complainant requests that a hearing be
17 held on the matters herein alleged, and that following the hearing,
18 the Committee issue a decision:

19 1. Revoking the probation granted under the Stipulation
20 in Case No. 1E-93-32049, and carrying out the disciplinary order
21 that was therein stayed, thereby revoking Physician Assistant
22 License Number PA 10552, heretofore issued to respondent John
23 Harvey Cates;

24 2. Revoking or suspending Physician Assistant
25 License Number PA 10552, heretofore issued to respondent John
26 Harvey Cates;

27 3. Ordering respondent to pay the Committee the

1 reasonable costs of the investigation and enforcement of this case
2 and, if placed on probation, the costs of probation monitoring;

3 4. Taking such other and further action as the
4 Committee deems necessary and proper.

5 DATED: August 15, 1997.

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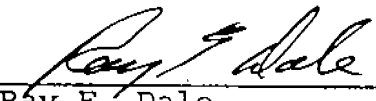
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Ray E. Dale
Physician Assistant Examining Committee
Department of Consumer Affairs
State of California

Complainant

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